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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,311	03/01/2004	Thomas R. Berger	10807.0139.NPUS01	9331
26720	7590	10/16/2006	EXAMINER	
LOCKE LIDDELL & SAPP LLP ATTN. DOCKETING 600 TRAVIS #3400 HOUSTON, TX 77002			PAHNG, JASON Y	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,311

Applicant(s)

BERGER ET AL.

Examiner

Jason Y. Pahng

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-26, 107 and 108 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-16, 22-26, 107 and 108 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species I, claims 8-16 and 22-26, in the reply filed on September 14, 2006 is acknowledged.

Claim Objections

The amendment overcomes the claim objections made in the last Office action.

Claim Rejections - 35 USC § 112

The amendment overcomes the claim rejections under 35 U.S.C. 112 made in the last Office action.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 14, is "an impact member" in line 2 the same as "an impact member" in line 3 of claim 8?

Claim Rejections - 35 USC § 102

The amendment overcomes the claim rejections under 35 U.S.C. 102 made in the last Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-12, 14-16, 22-24, 26, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements (US 3,113,735) in view of Reaux (US 3,439,878).

With regard to claim 8, Clements discloses a food waste disposer including:

1. a rotatable member (80, 99) coupled to a rotational source (45);
2. a stationary plate (62) disposed adjacent the rotatable member (80, 99) and defining a plurality of apertures (74) therethrough; and
3. wherein at least one first portion (99) of the rotatable member (80, 99) shears over (bottom of 99) at least some of the apertures (74) in the first stationary plate to shear the food waste.

Claim 8 also calls for an elongated throughhole for the impact member. In a closely related art, Reaux discloses a food disposer with an elongated throughhole (39) for an impact member in order to allow a radial sliding movement. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide

Clements with an elongated throughhole for an impact member in order to allow a radial sliding movement; as taught by Reaux.

With regard to claim 9, Clements discloses the sum of open areas of approximately 1/3 of the total area of the stationary plate (62) in Figure 2.

With regard to claim 10, Clements discloses a rotatable plate (80) having a central portion attached to a rotational source (45) in Figure 1.

With regard to claim 11, Clements discloses a rotatable plate (80) and a stationary plate (62) situated on a plane in Figure 1.

With regard to claim 12, Clements discloses a stationary plate (62) with a central opening (66) in which the rotatable plate (80) is positioned for rotation.

With regard to claim 14, Clements discloses one first portion (99) of the rotatable member (80, 99) comprises an impact member (99) having a surface or edge (bottom of 99) sliding on the stationary plate and passing adjacent the apertures (74) in the stationary plate.

With regard to claim 15, Clements discloses an impact member (99) comprising a lug fixedly or movably attached to the rotatable plate (80) in Figure 2.

With regard to claim 16, Clements discloses a separation distance of about 2 mm (Figure 1). It is noted that Clements may not disclose a separation distance of 2 mm, but Clements discloses a separation distance of about 2 mm.

With regard to claims 22 and 24, Clements discloses a stationary ring (36) having an inner wall disposed about the stationary plate (62), wherein at least a second portion

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(79) of the rotatable member (80, 99) comprises an impact member (79) having an end (79) for passing adjacent the inner wall for grinding food waste.

With regard to claim 23, Clements discloses a stationary ring (36) comprising a plurality of teeth (60 and 61) formed on the inner wall.

With regard to claim 26, Clements discloses an impact member (99) comprising a lug movably attached to the rotatable member (80).

With regard to claim 107, Clements discloses the impact member sliding on or near the surface of the stationary plate and passing over at least some of the apertures in the stationary plate.

Claims 16, 25, and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements (US 3,113,735) in view of Applicant's Admitted Prior Art (AAPA). The examiner's statement of Official notice in the last Office action was not traversed by Applicant, and thus the common knowledge is taken to be admitted prior art. See MPEP 2144.03.

With regard to claim 16, alternatively, AAPA teaches that a separation distance in the range of 0 to about 2 mm is obvious to an ordinary skill in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to teach Clements to use a separation distance in the range of 0 to about 2 mm, as taught by AAPA.

With regard to claim 25, AAPA teaches that use of fixed lug is obvious to an ordinary skill in the art. Therefore, it would have been obvious to one skilled in the art at

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the time the invention was made to teach Clements to use a fixed lug, as taught by AAPA.

With regard to claim 108, Examiner takes an Official Notice that forging, casting, or machining the impact member is obvious to an ordinary skill in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to teach Clements to forge, cast, or machine the impact member, as such is well known and obvious in the art.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clements (US 3,113,735) in view of Reaux (US 3,439,878) as applied above, further in view of Niekamp et al. (US 3,112,079). Claim 13 calls for a plurality of teeth around the central opening of the stationary plate. In a closely related art, Niekamp discloses a food waste disposer with a plurality of teeth (90) around the central opening in order to provide additional apertures to grind and pass material. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Clements with a plurality of teeth around the central opening in order to provide additional apertures to grind and pass material, as taught by Niekamp.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

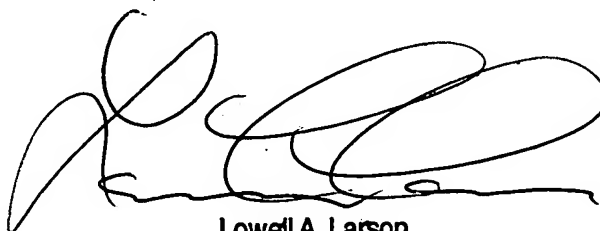
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Y. Pahng whose telephone number is 571 272 4522. The examiner can normally be reached on 9:00 AM - 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571 272 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JYP

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Lowell A. Larson
Primary Examiner